

# **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION**

## **ORDER BY CONSENT ISSUED TO**

**Harmony Shenandoah Valley LLC  
Harrisonburg, VA  
Registration No: 81376**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Harmony Shenandoah Valley LLC, for the purpose of resolving certain alleged violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.
6. "Harmony" means Harmony Shenandoah Valley LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means Harmony's organic fertilizer manufacturing facility located at 140 Leray Circle, Harrisonburg, VA 22802 in Rockingham County.
8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "Permit" means the Stationary Source Permit to Construct and Operate, (Permit/Registration #81376) date March 8, 2001. Pursuant to Va. Code § 10.1-1322, permits are enforceable in the same manner as regulations and orders.
10. "CFR" means Code of Federal Regulations.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. Harmony owns and operates the Facility which is the subject of the Permit. The Permit allows the operation of the Facility under applicable Regulations of the Board.
2. Harmony was issued a Warning Letter (WL) dated May 8, 2002 citing apparent violations after a DEQ inspection revealed that Harmony was not operating under its permit conditions. The following conditions were found to be out of compliance: 1, 6, 7, 8, 13, 17, 18, 19, 20, 22, 23, 24, 25, 32, 33, 34, 40, 41, 45, 46, 47, 48, 52, and 54. Conditions 32 and 34, setting PM limits for the waterwide gasification unit, reactor/granulator, rotary dryer/cooler (Condition 32) and the baghouse dust collector (Condition 34), are the only conditions relative to this Order.
3. During a meeting between DEQ and Harmony on May 22 at DEQ, Valley Regional Office, DEQ determined that a Letter of Agreement (LOA) could best address the issues outlined in the WL. The resulting LOA, issued July 10, 2002, outlined a schedule of corrective action that Harmony agreed to follow. Pertinent to this Order, Harmony was to conduct an Initial Stack Test Emission Study to measure the discharge of PM-10 emissions from the stack while using natural gas as fuel.
4. Pursuant to the LOA, Harmony conducted the initial study and notified DEQ in a report dated September 27, 2002 that the test results showed a PM-10 emission rate of 2.56 lbs/hr, which was significantly above the limits specified in permit Conditions 32 and 34.
5. Based on the foregoing PM test results, DEQ halted further testing and held a second meeting with Harmony on November 12, 2002 to discuss the LOA and resultant PM-10 testing which had revealed the unexpectedly, and disproportionately, high emissions rates. DEQ informed Harmony that the LOA would necessarily be terminated and that other enforcement action would be necessary.

6. Harmony was issued a Notice of Violation (NOV) effective November 25, 2002 citing the apparent violations of permit Conditions 32 and 34, as revealed by the PM test report. DEQ finds that Harmony may be in violation of Section 9 VAC 5-50-260, which provides that “No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.” Specifically, Harmony reported a combined facility PM-10 emission rate of 2.56 lbs/hr, which is projected to 11.21 tons/yr potential PM emissions. Permit Conditions 32 and 34 allow a combined PM limit of 3.79 tons/yr.

#### **SECTION D: Agreement and Order**

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Harmony and Harmony agrees, to perform the corrective actions described in Appendix A of this Order. In addition, the Board orders Harmony, and Harmony voluntarily agrees to pay a civil charge of \$2,800.00 in settlement of the violations cited in this Order.

1. Harmony agrees to pay the amount of \$2,800.00 of this civil charge within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Harmony’s Federal Identification Number. Payment shall be by check, certified check, money order, or cashier’s check payable to “**Treasurer of the Commonwealth of Virginia**” and sent to:

**Receipts Control  
Department of Environmental Quality  
P. O. Box 10150  
Richmond, Virginia 23240**

2. Harmony shall complete the corrective action described in Appendix A of this Order, which shall constitute a corrective action plan and shall replace the plan outlined in the LOA dated July 10, 2002, which will terminate upon execution of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Harmony, for good cause shown by Harmony, or on its own motion after notice to Harmony and its opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Harmony admits to the allegations in Section C of this Order.
4. Harmony consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Harmony declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of Harmony to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Harmony to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Harmony shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Harmony shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Harmony shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Harmony intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Harmony. Notwithstanding the foregoing, Harmony agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Harmony. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Harmony from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Harmony voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley  
Department of Environmental Quality

Harmony voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Harmony, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **APPENDIX A (Corrective Action Plan)**

1. Harmony agrees to complete the following:
  - a) Production Process Review: Harmony shall complete its review of process development issues by February 7, 2003 and address the following key issues:
    - (1) Consider eliminating the use of the Waterwide gasifier unit as part of the production process;
    - (2) Replace the current single exhaust stack with two separate stacks, one for the scrubber exhaust and one for the baghouse exhaust; and
    - (3) Vent the current recirculating baghouses out of the new stack.
  - b) Test Protocol: Harmony shall submit a test protocol to DEQ by February 28, 2003. Pursuant to Permit Condition 40, emissions tests must be conducted for SO<sub>2</sub>, VOC, NO<sub>x</sub>, HF, and HCl. Condition 40 also requires testing for Cl as well as a litter test to determine sulfur, chlorine and fluorine content during testing. In addition, a performance evaluation shall be conducted for the existence of excessive odors at the Facility.
  - c) PM Emission Test Protocol: Harmony understands, and agrees, that a second PM-10 test must be conducted after changes are made to the stack configuration. A PM-10 testing protocol and schedule shall be determined at a later date, to allow for system tweaking and resolution of any process or testing issues that may develop, but shall be completed before April 16, 2003.
  - d) Performance Test: The performance test (excluding the PM testing) shall be completed no later than five weeks after DEQ approval.
  - e) Permit Changes: Upon DEQ's review of all testing results, and consultation with DEQ, Harmony shall submit an updated permit application to support the development of a revised permit. Harmony shall submit the revised application no later than June 13, 2003.
2. Harmony understands and agrees that the test results and information reported to and gathered by DEQ may be incorporated by DEQ into a revised Permit and may result in new or revised Permit Conditions. A failure by Harmony to meet said conditions will subject Harmony to liability for future enforcement actions.